

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

HECTOR JAUREGUI,

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Petitioner,
vs.

Civ No. 12-cv-683 CLERK ALBUQUERQUE

LEE VAUGHN, WARDEN

Respondent.

**ORDER (1) ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION; AND
(2) DISMISSING THIS PROCEEDING WITH PREJUDICE**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD"), filed September 25, 2012 (Doc. 9). Petitioner filed objections to the Magistrate Judge's PFRD on October 12, 2012 (Doc. 10).

A party is entitled to file and serve written objections to the Proposed Findings and Recommendations of the designated Magistrate Judge. 28 U.S.C. § 636(b). For the Court to reconsider the findings and recommendations, Petitioner is required to show "that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). In his Objections, Petitioner does not object to any proposed finding or recommended disposition by the Magistrate Judge, but instead raises a new issue. Petitioner asserts that the "aggregate term" of his state and federal sentence when calculated together should only be six (6) years and eight (8) months but, Petitioner alleges that he would serve an additional two months "disqualifying him for (sic) obtaining any good time credits" because of his proposed release date scheduled for June 5, 2013 (Doc. 10). This issue was not raised in Petitioner's Motion or Reply and therefore was not raised before the Magistrate Judge. The Tenth Circuit has determined that petitioners should not be allowed to raise new arguments in their objections "after the issuance of magistrate judge's

report and recommendation." Williams v. McNeil, 557 F.3d 1287, 1291-92 (11th Cir. 2009). Specifically, "the Tenth Circuit stated that issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir.1996); Cupit v. Whitley, 28 F.3d 532, 535 & n. 5 (5th Cir.1994); Paterson-Leitch Co. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985, 990-91 (1st Cir.1988).

In accordance with Tenth Circuit case law, the Court declines to consider Petitioner's newly raised issue, adopts the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 9), and denies Petitioner's 28 U.S.C. § 2241 Motion (Doc. 1). Petitioner's claims have been fully addressed and he has not presented any meritorious arguments on which to grant habeas corpus relief, therefore, this civil proceeding should be dismissed with prejudice.

IT IS HEREBY ORDERED that the Proposed Findings and Recommended Disposition of the United States Magistrate Judge (Doc. 9) are adopted by the Court;

IT IS FURTHER ORDERED that Petitioner's Objection (Doc. 10) is denied;

IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1) is dismissed with prejudice.



THE HONORABLE JAMES A. PARKER
UNITED STATES DISTRICT JUDGE